

## NATIONAL POLICY ON UNAUTHORIZED DISCLOSURES

### I. Background

Unauthorized disclosures of classified information represent a lack of discipline within the U.S. Government which may result in one or more of the following: 1) the disclosure of classified or other sensitive government information, 2) the compromise and negation of various intelligence sources and methods, and 3) the foreclosure of policy options available to senior governmental decision makers. In many circumstances, unauthorized disclosures have a negative and debilitating impact upon the effective and efficient functioning of government.

Over the years, successive Administrations have attempted with varying degrees of success to eliminate such disclosures. It is clear, therefore, that a national policy on unauthorized disclosures does exist, i.e. unauthorized disclosures must be stopped. The most recent examination of the problem of unauthorized disclosures occurred in early 1982. At that time, an interdepartmental group consisting of representatives from Central Intelligence Agency, and the Departments of Defense, Energy, Justice, State and Treasury, prepared a report (the Willard Report) designed to improve the Government's ability to protect classified information and prevent unauthorized disclosures. The remedial steps suggested were:

- a. that the Administration support legislation to strengthen existing criminal statutes that prohibit the unauthorized disclosure of classified information. Rather than trying to prosecute federal employees under the espionage laws, it was recommended that a new statute be enacted which would make it a criminal offense for a federal employee or contractor to disclose classified information to unauthorized persons;

- b. that all persons with authorized access to classified information be required to sign binding and enforceable secrecy agreements acknowledging that they

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MEMORANDUM FOR : Members of Unauthorized Disclosures  
Investigations Subcommittee (UDIS):  
25X1 FROM : [REDACTED]  
Chairman, Unauthorized Disclosures  
Investigations Subcommittee  
SUBJECT : SECOM Conference, 13 October 1982

25X1 1. On 13 October 1982, the undersigned gave copies of the attached letter and papers to all of the the Security Committee (SECOM) members. [REDACTED] asked that the paper on unauthorized disclosures be expanded beyond its current focus on the Willard Report to cover certain of the points which I raised in my speech to the SECOM. A new suggested draft of this paper will be forwarded to you shortly.

2. The Security Committee also addressed the issue of SECOM and, more particularly, UDIS participation in the Attorney General group which would attempt to prioritize leak cases and determine which cases should be investigated by the FBI. SECOM was unanimous in supporting such UDIS participation and an appropriate letter will be drafted for DCI signature offering the services of UDIS in this endeavor.

3. It was noted at the meeting that the requested funds for a leak data base and a study of damage done by previous leaks was very uncertain. Nevertheless, the SECOM believed that a study of leaks should be undertaken. There was broad support for creation of a task force composed of full-time participants, on loan from the various agencies for a 1-3 month period. The UDIS would oversee the task force effort. The SECOM was requested to submit at the November meeting suggested subject areas to be studied. A decision on the subject areas will influence the choice of task force participants.

4. The paper on damage assessments also was discussed and the SECOM members were asked to be prepared to address the issues contained in the paper at the November meeting.

25X1

Attachments

have been informed of their obligation to protect the classified information to which they have access. These secrecy agreements would include a prepublication review requirement;

c. that agencies adopt appropriate policies to govern contacts between media representatives and government officials;

d. that each agency that originates or stores classified information adopt internal procedures to ensure that unauthorized disclosures of classified information are effectively investigated and that appropriate sanctions are imposed for violations;

e. that where the Department of Justice and the affected agencies believe an investigation is warranted, the FBI be permitted to investigate unauthorized disclosures of classified information under circumstances where the immediate result of a successful investigation would be imposition of administrative sanctions rather than criminal prosecution;

f. that existing agency regulations be modified to permit the use of polygraph examinations of government employees under carefully defined circumstances; and

g. that authorities for the federal personnel security program be revised and updated.

There appears to be broad support for the recommendations set forth in the Willard Report with the exception of the polygraph and prepublication review provisions. There was some concern that the polygraph would be objectionable to senior government officials and military personnel and that it was too drastic, intrusive and unreliable to be used in most leak investigations. The proponents of polygraph testing, on the other hand, point to thirty years of experience in utilizing the polygraph in security investigations. This experience suggests that the polygraph is not only reliable, it serves as an important deterrent to inappropriate handling of classified information. Moreover, it was noted that the polygraph recommendation was very narrowly focused. The polygraph would only be used when a small number of individuals had been identified as potential suspects and the examination itself would be limited to the unauthorized disclosure being investigated and would not include lifestyle questions.

In a similar vein, the prepublication review requirement has been viewed in some circles as inappropriate for senior government officials and others whose post government activities would involve the writing of numerous works for publication. Proponents argued that existing secrecy agreements already restricted such publication. They noted, moreover, that the U.S. Supreme Court has indicated that the prepublication review requirement was implied in the granting of access to classified information, whether or not an agreement had been signed. Proponents, therefore, suggested that including a prepublication clause in the secrecy agreement served only to make explicit existing legal requirements. They argued, moreover, that it was only fair that individuals signing secrecy agreements be placed on clear notice as to what their obligations were in this regard.

The Willard Report, after being approved by the Attorney General, was forwarded to Judge Clark, Assistant for National Security Affairs, for presidential approval and promulgation. The Report has been with Judge Clark for some time and the prospects of it being sent to the President prior to the November elections appear dim. We understand that Judge Clark has requested explanations of the various provisions of the Report from his legal officer but it is unclear when the Report will be forwarded to the President.

## II. Issues for Decision:

There are three suggested strategies to stimulate action on the Willard Report. The first option is to withdraw the Willard Report, and begin again with a new study containing a different mix of recommendations. For example, access to controlled government facilities might be withdrawn if individuals (e.g., journalists) with such access knowingly compromised classified information. A new and restructured report might recommend an Executive Order on the subject of unauthorized disclosures rather than the National Security Decision Directive suggested by the Willard Report.

The advantage of this option is that it capitalizes on the additional thinking within the Community that has occurred since the writing of the Willard Report. A paper with all of the strengths but none of the supposed weaknesses of the Willard Report could be written. The risk associated with this strategy is that the new paper would compete against the Willard Report and, rather than stimulating action, would cause additional delay and inaction resulting from a new protracted period of review. Alternatively, the two reports might be returned to the Community with the request that a third draft be prepared which would meld the two papers. (SUPPORTERS OF OPTION 1: None)